

Remarks

Claims 4, 10, 15, and 17-29 are currently pending in this application. Claim 29 is new.

- 5 The Applicant respectfully requests allowance of the present application in view of the remarks set forth below.

Amendments to the Specification

Paragraph [0001] of the specification has been amended to show the current status of related applications as requested by the Examiner.

- 10 **Claim Rejections – Double Patenting**
- Claims 4, 10, 15, 17-19, 22, 25, and 27 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 2-3, 18, and 28-31 of U.S. Patent No. 7,185,340. To overcome this rejection, Applicant has submitted a Terminal Disclaimer with this response.

- 15 **Claim Rejections – 35 U.S.C. § 101**
- Claim 15 is rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. The Examiner stated that this is because “the claimed invention are directed to system claim, but appearing to be comprised of software alone without claiming associated computer hardware required for execution (i.e., memory for storing the tree data structure).” The
- 20 Examiner also stated that “The system comprises only software modules is software system.” Applicant traverses these statements.

Claim 15 is directed to:

A system comprising:

means for storing a tree data structure;

25 *means for tracking the execution of operations upon the tree data structure; and*

means for rebalancing the tree data structure when an unbalanced sub-tree of the tree data structure reaches a threshold level greater than one, the rebalancing including a first rebalancing phase in which rebalancing operations are executed in parallel and nodes of the unbalanced sub-tree are unlocked, and a second
30 *rebalancing phase in which different rebalancing operations are executed.*

As stated in paragraph [0014] of the specification of the present application:

35 “The invention may be practiced in a computing system 200 such as illustrated in FIG. 2. Computing system 200 includes computer code 220 having computer instructions for performing processes of the invention, and memory 230 for storing task queue 260, update data 250, and a data structure 240, as further described herein. Computer code 220 is optionally stored in memory 230. Computing system 200 and the components included therein are optionally distributed over a plurality of computing devices.”

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As is clear from this paragraph, as well as the paragraphs that follow, more than mere software is described in the present application. At a minimum, a computing system including computer code and memory is explicitly described. This is also shown in the referenced FIG. 2. Further, one of ordinary skill in the art would know that a computing system including computer
45 code and memory to perform operations upon a data structure would inherently have a processor. Still further, such an arrangement is explicitly recited in originally filed claim 13 which claims “a memory for storing the tree data structure” and “a processor coupled to the memory, the processor operable to track the performance of operations upon the tree data structure and rebalance the tree data structure.”

50 As such, it is Applicant's position that the system of claim 15 is directed to more than
"software alone" or "only software modules." Applicant therefore believes that claim 15 is
directed to statutory subject matter.

The Examiner stated that "claim 15 would be allowable if rewritten or amended to
overcome the rejection(s) under 35 U.S.C. 101." Having now overcome this rejection, Applicant
55 respectfully requests allowance of same.

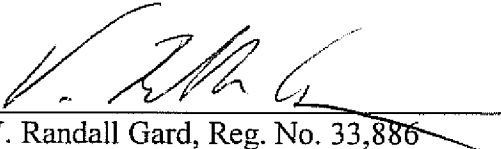
Further, in light of the above, Applicant has added new claim 29. This new claim 29 is
essentially the originally filed claim 13 amended with the additional rebalance limitations of
claim 15. Applicant respectfully requests allowance of this new claim in light of the above
arguments and cited support.

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Allowable Subject Matter

Applicant believes that all pending claims are allowable and respectfully requests that the
Examiner issue a Notice of Allowance. Should the Examiner have questions, the Applicant's
undersigned representative may be reached at the number provided.

65 Respectfully submitted,
Clifford L. Hersh

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